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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : 30th MAY, 2017

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CRL.REV.P. 83/2016 & CRL.M.A.No.1902/2016

SHALU RAGHAV

..... Petitioner

Through : Ms.Neetu Singh, Advocate.

versus

STATE GOVT OF NCT OF DELHI & ANR

..... Respondents

Through : Mr.Amit Gupta, APP.

Mr.Kedar Yadav, Advocate for R2.

AND

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CRL.REV.P. 58/2016

STATE (NCT) OF DELHI

..... Petitioner

Through : Mr.Amit Gupta, APP.

versus

MONIL YADAV

..... Respondent

Through : Mr.Kedar Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Aggrieved by an order dated 07.10.2015 of learned Addl. Sessions Judge in Sessions Case No.29/2015 arising out of FIR No.135/2014 PS Chanakya Puri whereby the respondent No.2 – Monil Yadav (hereinafter referred as 'the respondent') was discharged of the offences punishable

under Sections 376/328/506 IPC, State and the victim have preferred the present petitions which are contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. On 18.06.2014, the prosecutrix 'X' (assumed name) lodged a written complaint at PS Chankya Puri disclosing that Bal Mukund Sharma @ Panchal (hereinafter referred to 'A-I') and his associate—the respondent, resident of Kaushambi Indrapuram, Ghaziabad were known to her for about a year. A-I often used to talk on her mobile No.9711578279 to provide her a job. 'The respondent' also used to talk to her on A-I's mobile. The prosecutrix further alleged that on 25.04.2014 both A-I and the respondent took her to Delhi in the parking of Ashoka Hotel at about 12.00 noon; administered stupefying substance in the cold drink and committed rape upon her in the car. Again, on 03.06.2014 in similar manner they both committed rape upon her in the parking lot near ISBT Kashmiri Gate, Delhi in the car. They had also committed rape upon her several times in Hindon Vihar (Ghaziabad) as well. She was criminally intimidated not to disclose the incident.

3. During investigation, statements of the witnesses conversant with the facts were recorded. 'X' when taken for medical examination, declined to undergo internal medical examination. Statement of the prosecutrix under Section 164 Cr.P.C. was recorded. A-I was arrested. Call Detail Records of the mobiles belonging to various individuals were collected. Upon completion of investigation, a charge-sheet for commission of offences punishable under Sections 328/506/376 IPC was filed against A-I in the Court. 'The respondent' was kept in column No.12 claiming lack of evidence against him.

4. By an order dated 04.08.2014, the learned Metropolitan Magistrate took cognizance against the respondent to face trial in the criminal proceedings. By an order dated 14.11.2014, the Revisional Court in Crl.Rev.No.77/2014 dismissed the revision petition and directed the respondent to appear before the Trial Court. Seemingly, the said order has attained finality.

5. By the impugned order, the learned Trial Court charged A-I for commission of offences punishable under Sections 328/376 IPC. The respondent, however, was acquitted of all the charges.

6. In her complaint dated 18.06.2014 'X' had implicated both A-I and 'the respondent' to have committed rape upon her on various occasions. She specifically disclosed the dates 25.04.2014 and 03.06.2014 when both A-I and the respondent had sexually assaulted her in the car, firstly in the parking of Ashoka Hotel and thereafter in the parking of ISBT. The prosecutrix also disclosed that A-I used to remain in touch with her on his mobile No.9810016616. She further informed that the respondent had a mobile No. 9899797332; her own mobile number was 9711578279.

7. In her 164 Cr.P.C. statement recorded on 20.06.2014, 'X' reiterated her version disclosed to the police and gave graphic detail as to how A-I and the respondent used to commit rape upon her on the allurements to provide her a job.

8. The Trial Court in the impugned order placed reliance upon the 'X's statement to frame charge under Sections 376/328 IPC against A-I. However, victim's statement was considered unreliable or deficient qua the respondent and he was exonerated of all the charges. This approach of the Trial Court cannot be justified. There were specific allegations against the

respondent by the complainant in her initial complaint dated 18.06.2014 as well as in her 164 Cr.P.C. statement. The respondent was specifically named in the FIR. Nothing has emerged to infer that the respondent had no acquaintance with A-I or that 'X' nurtured ill-will or animosity to falsely implicate him for sexual assault. No ulterior motive was assigned to the prosecutrix for respondent's false implication in the crime. At the stage of consideration of charge, there were no cogent or valid reasons for the Trial Court to suspect the victim's statement without giving her an opportunity to prove it during trial. Settled position of law is that the conviction can be based even on the sole testimony of the prosecutrix if it inspires confidence and can be relied upon; no independent corroboration is even asked for in such an eventuality.

9. The investigating agency, seemingly, was interested to exonerate 'the respondent'. Initially, he was put in column No.12 and charge-sheet was filed against him without arrest. Learned Metropolitan Magistrate in her wisdom took cognizance against the respondent for commission of the aforesaid offences. Challenge to the order taking cognizance in revision resulted in dismissal. The revisional Court has given cogent reasons to justify the cognizance taken by learned Metropolitan Magistrate.

10. During investigation, the investigating agency collected Call Detail Records of mobile phone 9899797332 and found it belonging to Subhash Yadav – respondent's father. On 25.04.2014 and 03.06.2014 there was no conversation over this mobile with the prosecutrix or A-I. It was further ascertained that on 25.05.2014 and 03.06.2014, its location was at Indrapuram, Vaishali and Kaushambi (Ghaziabad) respectively. On

analysing call details of mobile No.9999145569 it was found it was issued in the name of the respondent in February, 2012. Again, there was no conversation on this mobile with the prosecutrix or A-I. Call Detail Records of mobile No.9711578279 revealed that it was issued in the name of Deepak – victim's brother in May, 2014. It was active only from 29.05.2014 to 12.06.2014. There was no cell ID available on 25.04.2014. Mobile No.9899194885 in the name of one Inderjeet was used by the victim and her mother. There was no conversation with 'the respondent' on this mobile.

11. The Trial Court committed grave error to give clean chit to the respondent relying upon Call Detail Records of the mobile phones referred above. In her complaint dated 18.06.2014, the victim had specifically disclosed that 'the respondent' used to have conversation with her on A-I's mobile. Moreover, it is a matter of trial whether the mobile phones referred above remained in the custody of the various individuals at the relevant time. The CDR record is only a corroborative piece of evidence. At this stage, it cannot be presumed that the respondent was having his mobile in his possession at the time of commission of the alleged crime. Victim's Statement qua the respondent cannot be brushed aside at this stage. It is for the respondent to prove 'alibi' by leading credible evidence during trial. Initially, Mobile no.9899797332 was issued in the respondent's name. Subsequently, allegedly it was transferred in his father's name in 2011. It is to be ascertained during trial as to who used to have the custody of the mobile.

12. The Trial Court has discussed the relevant law to be taken into consideration at the time of consideration of charge while framing charge

against A-I. No sound reasons exist not to apply the said 'law' qua the respondent.

13. Resultantly, the impugned order discharging the respondent cannot be sustained and is set aside. The respondent shall appear before the Trial Court on the date fixed i.e. 08.07.2017 to face trial.

14. Observation in the order shall have no impact on merits of the case.

15. The petitions and all pending application(s) stand disposed of.

16. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

MAY 30, 2017 / *tr*